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VIRGINIA LAW REGISTER.

EDITED BY GEORGE BRYAN

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Judges Tyler and Watson.

Hon. D. Gardner Tyler has been elected by the General Assembly as Judge Hubbard's successor, and Hon. Walter A. Watson to succeed Judge Hancock. Both gentlemen are well known to the bar and people of the state for valuable services rendered in other capacities, and both have our best wishes for continued usefulness.

Judges Hubbard and Hancock.

Two of our valued judges have recently passed away, the Hon. J. Fillmer Hubbard, of the Fourteenth Circuit, and Hon. Beverly A. Hancock, of the Fourth Circuit. Both were men of experience and high character, who have left behind them memories of faithful public service, which will always be grateful alike to their Commonwealth and their friends. It was our good fortune to have known Judge Hancock personally for many years. Like most men who have fought their way up from a youth of narrow opportunities to public recognition and universal respect, he was unaffected and cordial in manner, and at the same time dignified and direct in his methods.

To Our Subscribers.

With this number, we inaugurate the change of method mentioned in January. While we do not report every opinion of the Supreme Court of Appeals of Virginia, we nevertheless give the official head notes of all down to the last convenient date, and, in addition, we report in full several of the decisions with such comment as seems proper and probably useful. Advices from our subscribers indicate their approval of the change. We shall continue to conform to this method, hoping by a discriminating selection of important cases, with editorial notes thereon, to commend the REGISTER to its patrons along lines

other than those of mere quantity, while subserving at the same time, in good measure, by the publication of the *syllabi* of all the decisions of the court, the role of a complete reporter.

New Legislation. Senator Patteson has introduced the following bill (Senate Bill No. 27) in the Senate of Virginia which, if made a law, will, to say the least, make much of the learning upon the subject a matter of historical interest only:

1. Be it enacted by the General Assembly of Virginia, That whenever in any court of law or equity any instrument in writing is relied upon by either party, the party alleged to be bound thereby may introduce parol evidence to contradict, vary, or add to such instrument, where, under appropriate allegations in the pleadings, it shall appear that such instrument was procured through fraud, accident, or mistake, or where a fraudulent attempt has been made to misuse the same, in violation of an oral promise or agreement made at the time when such instrument was signed or executed.

Senator Patteson has also introduced the following bill:

"1. Be it enacted, &c., That demurrers to evidence are hereby abolished.
"2. This act shall take effect ninety days from its passage."

Mr. Gunn, of Norfolk City, has introduced a bill to constitute "the Governor, Attorney-General and presiding justice of the Supreme Court of Appeals a Board of Justice with authority to suspend the judge of any court of this Commonwealth, during the interregnum (sic) of the sessions of the General Assembly, for just cause," after due notice.

We take it for granted that the bill was introduced seriously, but confess to some curiosity as to the local or state conditions which prompted it, especially as it is an "emergency" measure. Section 54 of the Constitution provides for the impeachment of judges and other officers by the House of Delegates and for their trial by the Senate, which may sit for that purpose during the recess of the General Assembly. Section 104 provides for the removal of judges, after notice, by a concurrent vote of both houses. These provisions seem to us exclusive. But the bill is manifestly predicated upon the implied power of the legislature not only to make other provision of the same nature, but to delegate its power to three state officers, who shall together form a "Board of Justice." Much might be written along the old line of a dependent judiciary, but it is hardly worth while. If ever a state throughout her history had rea-

son to be satisfied with the moral tone of her judiciary, that state is Virginia. Let us have, rather, a suspension of time-consuming and abortive efforts to abate evils which do not exist, and let us devote the requisite voltage to subjects of law and practice reform upon which all are substantially agreed, but which, being everybody's business, become too often no one's.

The New Circuit Court System.

With the last day of January, 1904, the changes made by the Constitution of 1902 in the judicial system of Virginia became operative, and we are now confronted with the new order of things. Time alone will test its merits, but we are frank to say that we like the prospect. The venerable county courts, with their monthly terms, are now only a memory. Considerable sentiment concerning them has been expressed in the correspondence columns of the newspapers of the state, and should be treated respectfully—like any form of veneration for what is old and has served its peculiar day. But we do not imagine that anything but good will accrue to the substantial interests of the Commonwealth as a result of the new system. It will be remembered that this was decreed by a body of the people's representatives, chosen in the main with especial regard to the occasion, and familiar with all the arguments, whether sentimental or practical, for and against the respective systems, and the present condition is the result of their best judgment. We cannot here attempt even a summing-up of both sides of the question. To our mind, the existing method is best for the single reason that it embodies what was meritorious under the old system and also speeds the course of justice in civil cases. The former Circuit Court schedule of two terms annually for the trial of jury cases was itself an invitation to technical obstructions. Now, with the terms trebled, Fabian tactics will manifestly avail only one-third as much as in "the good old days," and will be proportionately discouraged and discredited. The criminal side of our dockets will not be unduly postponed. Misdemeanors will be tried by magistrates, as heretofore, and felonies may well await the more careful investigation of counsel for and against the parties charged. We do not attach any great importance to the passing of "cote-day," concerning which as much can be said against as for. We are generally in favor of the change and predict the endorsement by the people of the state of the work of

the Constitutional Convention in this respect, as soon as the new judicial machinery shall have been given a fair opportunity to get in good running order.

Judge Wellford.

Banquets are better than memorial resolutions, in that, as to them, the subject is more than an object. On the 31st ult., Hon. Beverly R. Wellford, Jr., retired from the bench of the Tenth Judicial Circuit after thirty-four years of continuous service, and on the evening of the second instant, the Richmond Bar Association tendered to him at the Westmoreland Club of Richmond, a banquet in honor of the event, as an earnest of their regard for him as an officer and citizen. Covers were laid for one hundred and fifty and the occasion was enjoyed by all. Hon. R. Carter Scott, Judge Wellford's successor, was master of the feast, and at its conclusion introduced Mr. Wyndham R. Meredith, who in a happy address presented to Judge Wellford a handsome silver pitcher and waiter as a further souvenir of the occasion, Judge Wellford acknowledging the gift in appropriate words. Hon. Samuel B. Witt, Judge of the Hustings Court of Richmond, responded with all of his old time grace and strength of diction to the toast, "The Bench," while Major Charles S. Stringfellow, the Nestor of the Richmond bar, concluded the speaking with interesting reminiscences of lawyers and law-suits of other days.

We are glad that this acknowledgment of the services of an honored public servant was made. It was spontaneous and significant of the sentiment of the entire community. No man in public or private life among us is held in higher esteem, by his wide circle of official and personal acquaintances, than is Judge Wellford. He has gone in and out among the people of his circuit for a period approaching two score years, and retires from his duties of his own accord. Firm in his convictions of the right, as he saw it, he has always striven to make it the basis of his judgments. Ever kindly and approachable in his demeanor, and especially careful of the feelings of the younger members of his bar, he at once elicited from all a personal regard which time soon turned into affection. His record as a judge is completed, but we rejoice to know that his general health is excellent and we trust that for many years we shall have among us the stimulus and encouragement of his genial presence.

We note with satisfaction that House Bill No. 94, establishing the Torrens System for the registration of land titles in Virginia has been reported favorably to the House of Delegates by its Committee on Courts of Justice. The bill provides that such registration shall be voluntary, and for the administration of the system by the circuit courts. This is a decided step forward in the progress of the measure. The committee sat judicially, hearing exhaustive argument for and against the bill, and its favorable report is entitled to great weight with the members of the legislature who have not had the opportunity to investigate the details of the subject. We trust that both branches of the General Assembly will endorse the action of the House Committee and pass the bill. Certainly, if they act merely as representatives, they will be influenced by the numerous requests from organizations of the most intelligent and substantial elements in the state, asking for the enactment of the measure. What harm the law could do has never been clearly demonstrated, the most familiar argument against it being the negative one of inability to perceive its merits. Yet to this a sufficient reply would seem to be the experience of other states and countries, which, having once adopted the system, have never done away with it, but instead have enlarged its scope and amplified its details. There were many earnest and sincere protests against the law abolishing entails, against the statute of descents and against other and similar *compulsory* measures. They were denounced as revolutionary, but time has shown that they were rather evolutionary, towards greatly improved conditions. No one would go back to the land tenures of the eighteenth century. Even the most sincere opponents of the Torrens System acknowledge that the frailty of titles at the present time is apparent and deplorable and that "something ought to be done." But as they fail even to suggest a remedy, much less to make an effort to secure legislative sanction for it, it would seem only fair that a system which has stood the tests of experience and criticism should at least be given a trial. The present General Assembly could in our judgment do nothing in the range of practical legislation for present needs which would commend it to the judgment of our people, present and to come, more than the adoption of the Torrens System.

The Torrens System.

In this connection, we note that Mr. Eugene C. Massie, of the Richmond Bar, the able and "never discouraged" advocate of the

Torrens System, delivered the annual address before the State Bar Association of West Virginia, at its meeting in Parkersburg, in December last. His topic was naturally the System. He acquitted himself handsomely before the lawyers of our daughter state, who expressed great interest in the subject and a desire to learn more of it. Thus the seed is being constantly sown—the harvest will come in due time.

The Ethics of Criticism.

We reproduce in this number from the *Central Law Journal* the reply of Hon. John W. Daniel to a criticism in the *Harvard Law Review,* of June, 1903, of the fifth edition of his work on Negotiable Instruments. It should be carefully read by all who are interested in this subject matter of the law, and also by any who take pleasure in seeing one who ventures rashly into a field for which he is not equipped fairly but completely unhorsed. The reply is of the *res ipsa* kind, upon which comment by us would be superfluous, further than to say that it is a model of its class, courteous in tone but conclusive in style and in effect.

We may take it as a text, however, for presenting our own views upon the general subject of criticism. We do not know the author of the ill-advised venture in the case in question, but too often these criticisms are the work of law students or others only partially informed, to whom the books are given for the price of the review. The thought at once occurs to them, "If we commend the work unqualifiedly, we shall not have earned our wage, for criticism necessarily implies faultfinding. Besides, a too general concurrence in all that the author says might suggest that we do not know as much as he upon the subject. Therefore we must differ with him here and there." But this is a mistaken view. Etymologically a critic is a judge, and if the evidence before him is that, as a whole, the inherent merits of the book are such as to demand general commendation, he should make the award accordingly. But, further, a critic, according to the glossaries, is one who is skilled in judging of merit—one who is qualified to discern and distinguish excellences and faults, and manifestly the designation of an unskilled or unqualified person to review a technical work is both unfair to the author of the work and is a reflection upon the journal in which the criticism appears. As a general proposition, the author of a

law-book knows more about his theme than ninety-nine-one-hundredths of his possible critics. Only those who have addressed themselves seriously and conscientiously to the preparation of a technical monograph, in its fullness and its detail, can have any real comprehension of the sense of responsibility which attaches to the undertaking. This, with the man of a corresponding sense of propriety, can result only in a desire and intention to attain at once accuracy and thoroughness. Months and years are given to the one idea, and the result is unquestionably the superior equipment of the author over the critic of the completed work.

We are far from saying that there are no poor law-books, but we deprecate the too common custom of finding, after a more or less hurried examination, a mis-citation here or possibly a misapplication there, and then of pronouncing a general verdict of condemnation or its equivalent, faint praise. That we may give our idea of fair criticism, we take up the last edition of a standard work. In its chapter on collections, the question is considered as to whether a bank is justified in surrendering a bill of lading to a consignee upon the acceptance of a time draft, and the affirmative and negative of the proposition are asserted broadly in connected paragraphs. Of course there is no excuse for this, and here is an opportunity for proper criticism and condemnation, for the text writer should have selected one or other of the doctrines, according to his best judgment, so expressed, placing the converse in a foot-note, or under the head of cases *contra*. Nevertheless this is a standard work which we keep constantly at hand, assured that its author and his recent editor have successfully blazed the way to a proper comprehension of the subject by those who will read discriminatingly.

To sum it all up by a return to our text—first, competency and, second, fairness, not microscopy, should be the qualifications and spirit of the critic. Any contribution to the learning of the age has generally something, though it may be at times only a fragment of merit to commend it. And when we leave the range of small things and approach the task of reviewing works which have for decades received the endorsement of master-workmen, it should be undertaken, from the standpoint of precaution alone, by an approved expert, and not a sciolist.